Fire Ins. Co. v. *Pitcher,* 160 Ind. 392, 64 N. E. 921; Other courts hold there cannot be *implied* waiver after the time for furnishing proofs has elapsed, without a new consideration or an element of estoppel. *Commercial Fire Ins. Co.* v. *Waldron,* 88 Ark. 120, 114 S. W. 210; *Fidelity & Casualty Co.,* v. *Sanders,* 32 Ind. App. 448, 454; *Burlington Ins. Co.* v. *Ross,* 48 Kan. 228; *State Ins. Co.* v. *School Dist.* 66 Kan. 77, 71 Pac. 272; *Dale* v. *Continental Ins. Co.,* 95 Tenn. 38, 50; *McPike* v. *Western Assur. Co.,* 61 Miss. 37; *Employers' Liability Assur. Co.* v. *Rochelle,* 13 Tex. Civ. App. 232; *Merchants' Mut. Ins. Co.* v. *Lacroix,* 45 Tex. 158. *Hart* v. *Fraternal Alliance,* 108 Wis. 490. RICHARDS, INS., (3rd Ed.) § 122; VANCE, INS. 374. The position of these latter cases seems to be the correct one on principle, for otherwise, by calling a transaction a waiver of a forfeiture, courts come dangerously near to creating a new contract without consideration. However, the principal case, which represents the majority view, dispenses with strict theory in an effort to effect practical justice.

JUDGMENT—FAILURE OF JUDGE TO TAKE OATH—COLLATERAL ATTACK.—Defendant was found guilty of the unlawful sale of liquor. The case was tried by a special judge, who was elected according to statute in the absence of the regular judge. The clerk's entry upon the minutes did not show that the judge had taken the oath (prescribed by statute) that he had not participated in a duel since the adoption of the constitution. Defendant claims that the failure of the clerk's entry to show that this oath against dueling was administered to the judge rendered void all the proceedings in the court. *Held,* "The omission to administer this oath was an error which does not touch the merits of this case," and the former judgment stands. *Harness* v. *State,* (Tenn. 1912), 149 S. W. 911.

"Special judges are generally required to take oath of office before entering on the performance of their duties," 23 Cyc. 608 and cases cited; *State* v *Burnett,* 47 W. Va. 731, 35 S. E. 983. However it has been held that the judgments of a judge *pro tem,* elected by the bar, in conformity with the statute, are not void because he failed to qualify by taking the oath of office. *In re Hewes,* 62 Kan. 288, 62 Pac. 673; *Powers* v. *State,* 83 Miss. 691, 36 So. 6; *State* v. *Miller,* 111 Mo. 542, 20 S. W. 243. The objection that a special judge failed to take the oath of office is waived when not raised during the trial, *Johnson* v. *Jackson,* 130 Ky. 751, 114 S .W. 260. Also, under a statute providing that a special judge must possess "all the qualifications of a circuit judge, * * *" it is not necessary that a special judge shall be a resident of the district, *Commonwealth* v. *Carnes,* 30 Ky. L. Rep. 506, 98 S. W. 1045.

JURISDICTION—COUNTERCLAIM IN EXCESS OF COURT'S JURISDICTION.—The plaintiff filed a complaint in the County Court for $1,060 as balance due for rent. Defendant counterclaimed, asking damages in the sum of $2,350. By statute the County Court's jurisdictional limit was not to exceed $2,000. Defendant claims that upon the filing of the counterclaim for an amount in excess of this sum, the County Court was ousted of jurisdiction. *Held,*—The County Court was not ousted of jurisdiction over plaintiff's action, but defendant's counterclaim was placed out of such court, leaving the County

Court to determine only the issues raised by the complaint and the denials in the answer. *Dyett* v. *Harney,* (Colo. 1912), 127 Pac. 226.

The great weight of authority seems to be in accord with the decision announced in the principal case on the first proposition; besides cases therein cited, see *Robinett* v. *Nunn,* 9 Mo. 244; *Barber* v. *Kennedy,* 18 Minn. 216; *General Electric Co.* v. *Williams,* 123 N. C. 51; *Corley* v. *Evans,* 69 S. C. 520. Upon the side maintained by the defendant in the principal case, are *Howard Iron Works* v. *Elevating Co.,* 176 N. Y. 1; *Heigle* v. *Willis,* 50 Hun. (N. Y.) 588; *Bowman* v. *Gary,* Minor (Ala.) 326; and *McClain* v. *Kincaid,* 5 Yerg. (Tenn.) 232. The latter case indeed is not directly contra, but adopts a compromise, holding that although no settlement had been pleaded, nevertheless it may be done on appeal, if after plaintiff's claim is deducted from defendant's set off, the amount then remaining is not in excess of the lower court's jurisdiction. *Bennett* v. *Forrest,* 69 Fed. 421, allows the counterclaim to be set up, but if established, judgment might only be rendered for the amount of which the court had jurisdiction. The general rule of law seems to be in accord with the principal case that jurisdiction depends on the nature of the relief sought, not upon the facts as shown, and that where jurisdiction has once attached, it can not later be ousted, *Windsor* v. *McVeigh,* 93 U. S. 274; *Reynolds* v. *Stockton,* 140 U. S. 254; *Burch* v. *Davenport R. R. Co.,* 46 Ia. 449; *Neale* v. *Utz,* 75 Va. 480; *Succession of Hoover,* 30 La. Ann. 752.

LARCENY—UNSTAMPED RAILROAD TICKET THE SUBJECT OF LARCENY.—Defendant was indicted for the larceny of a railroad ticket. The evidence showed that he took an unstamped ticket from the ticket office. Under the statute it was larceny to steal a "railroad, railway, steamboat or steamship passenger ticket." *Held,* that under this statute, the railroad ticket, though not stamped, was the subject of larceny. *State* v. *Wilson* (Ore. 1912) 127 Pac. 980.

The decision is based upon the particular statute in the case, the Court concluding that the legislature intended to include unstamped railroad tickets as well as stamped tickets as subjects of larceny. Unstamped railroad tickets have not generally been regarded by the Courts and text-writers as the subjects of larceny. "A passenger ticket stolen from the ticket office of a railroad company before it has been stamped and dated is not the subject of larceny." 25 CYC. 13. "An unstamped, undated and unsigned railroad ticket is not the subject of larceny." *McCarty* v. *State,* 1 Wash. 377, 25 Pac. 299. "An incomplete engagement—e. g. an unstamped and undated railroad ticket—is not the subject as such of larceny." 2 WHARTON, CRIM. LAW (11 Ed.) § 1116. And in *Peo.* v. *Loomis,* 4 Denio 380, it was held that a receipt not made effective by being issued or delivered is not the subject of larceny. The Court said that a receipt must be "a genuine and effective instrument when stolen, or the crime of larceny cannot be committed." It would seem that as the ticket stolen in the principal case was unstamped and unissued it could not properly be regarded as a complete or effective contract, receipt, or token; in short, it could not be strictly denominated a "railroad ticket." Although the decision of the Court is the result of a rather liberal construction of a penal statute, it is evidently in conformity with the general intention of the